



August 15, 2008

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS OF SCHOOLS AND  
OTHER INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO ADOPT REGULATION  
SECTION 1859.184.1, AND AMEND REGULATION SECTIONS 1859.2,  
1859.103 AND 1859.184, ALONG WITH AN ASSOCIATED FORM,  
TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING  
TO LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to adopt and amend the above-referenced regulation sections, along with an associated form, contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the OPSC, at its own motion or at the instance of any interested person, may adopt the proposals substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend and adopt the above-referenced regulation sections under the authority provided by Section 17070.35 of the Education Code. The proposals interpret and make specific reference to Sections 17070.63, 17072.12, 17077.40 and 17079.20 of the Education Code.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law and filed with the Secretary of State on October 8, 1999.

The SAB, at its June 25, 2008 meeting, amended the SFP regulations to permit financial hardship school districts in the Overcrowding Relief Grant (ORG) Program to obtain advance site acquisition funding in order to acquire sites through condemnation proceedings. Without this regulatory amendment, financial hardship districts may lack the funds for an advance deposit required before the courts will issue orders for condemnation, thereby failing to demonstrate ownership of the site for purposes of SFP funding.

The proposed amendments also clarify the requirement for the project description to demonstrate that the project relieves overcrowding, and add additional application submittal dates (July 31, 2009 and January 29, 2010) for future funding cycles.

The proposed regulatory changes are summarized as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed amendment adds the definition of "Resolution of Necessity," that requires a school board resolution to acquire property by eminent domain in compliance with the California Code of Civil Procedure Section 1245.230.

Existing Regulation Section 1859.103 specifies how school districts may apply savings from completed SFP projects, but that the grants for ORG projects are limited to eligible expenditures. The proposed amendments create an exception to this limitation upon ORG Program projects as set forth in proposed new Regulation Section 1859.184.1.

Existing Regulation Section 1859.184 specifies the submittal and apportionment process for school districts applying for funding under the ORG Program. The proposed amendments add additional application submittal dates (July 31, 2009 and January 29, 2010) for future funding cycles, and clarify the requirement to demonstrate that the project will relieve overcrowding by increasing useable outdoor space for uses such as play areas, green space, or outdoor lunch areas.

Proposed adoption of Regulation Section 1859.184.1 sets forth the application process for school districts with financial hardship approval under the ORG Program. It includes the criteria for a complete application, determination of site acquisition funding for condemnation actions, and the limitation that no over-apportionment of site acquisition funds for condemnation may be applied as "savings" to construction related costs for purposes of Regulation Section 1859.103.

Form SAB 50-05, *Fund Release Authorization*, is the application by school districts for the release of SFP apportionments for their projects upon compliance with specified criteria. The proposed amendments permit the advance release of site acquisition funds pursuant to Regulation Section 1859.184.1.

#### IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulations.

#### ECONOMIC IMPACT

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact on businesses or private persons that might result from the proposed regulatory action and the following determinations have been made relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- There will be no impact in the creation or elimination of jobs within the State, the creation of new businesses or the elimination of existing businesses or the expansion of businesses in California.

- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- There are no costs or savings to any State agency.
- The SAB has made an initial determination that there will be no impact on housing costs.

#### EFFECT ON SMALL BUSINESSES

It has been determined that the adoption of the regulation sections will not affect small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. These regulations only apply to school districts for purposes of funding school facility projects.

#### SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OPSC no later than September 29, 2008, at 5:00 p.m. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Robert Young, Regulations Coordinator

Mailing Address: Office of Public School Construction  
1130 K Street, Suite 400  
Sacramento, CA 95814

E-mail Address: [robert.young@dgs.ca.gov](mailto:robert.young@dgs.ca.gov)

Fax No.: (916) 445-5526

#### AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Robert Young at (916) 445-0083. If Mr. Young is unavailable, these questions may be directed to the backup contact person, Lisa Jones, Supervisor, Regulations Team, at (916) 322-1043.

#### ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulations substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written

comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulation should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

#### SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

#### RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in strikeout/underline.
2. A copy of this notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received, they will be added to the rulemaking file. The file is available for public inspection at the OPSC during normal working hours. Items 1 through 3 are also available on the OPSC Internet Web site at: <http://www.opsc.dgs.ca.gov> under "Regulations," then click on "Proposed Regulations."

#### ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SAB would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulation coordinator named in this notice or may be accessed on the Web site listed above.